No. 15-138

IN THE
Supreme Court of the United States

RJR NABISCO, INC., ET AL.,
Petitioners,

v.

THE EUROPEAN COMMUNITY,
ACTING ON ITS OWN BEHALF AND ON BEHALF OF THE
MEMBER STATES IT HAS POWER TO REPRESENT, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENTS

JOHN J. HALLORAN, JR.
JOHN J. HALLORAN, JR., P.C.
Westchester Financial Center
50 Main Street, Suite 1000
White Plains, NY 10606
(914) 682-2077

KEVIN A. MALONE
CARLOS A. ACEVEDO
KRUPNICK CAMPBELL MALONE
BUSER SLAMA HANCOCK
LIBERMAN P.A.
12 Southeast Seventh Street
Suite 801
Fort Lauderdale, FL 33301
(954) 763-8181

DAVID C. FREDERICK
Counsel of Record
GEOFFREY M. KLINEBERG
MATTHEW A. SELIGMAN
KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@khhte.com)

February 4, 2016

(Additional Counsel Listed On Inside Cover)

JOHN K. WESTON
SACKS WESTON DIAMOND
1845 Walnut Street
Suite 1600
Philadelphia, PA 19103
(215) 925-8200

QUESTION PRESENTED

Whether a claim under the Racketeer Influenced and Corrupt Organizations Act may be sustained by pleading both domestic and extraterritorial conduct, where Congress has expressly provided for the extraterritorial application of the statute and where well-settled canons of statutory construction provide that foreign plaintiffs may recover for injuries sustained abroad.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT OF THE CASE 3

A. Statutory Background 3

B. Respondents' Investigation Of Cigarette Trafficking And Money Laundering 6

C. Petitioners' Money-Laundering Scheme 9

D. Proceedings Below 11

SUMMARY OF ARGUMENT 15

ARGUMENT 18

I. THE COMPLAINT ALLEGES DOMESTIC RICO VIOLATIONS 18

A. The Complaint Alleges Domestic Racketeering Conduct 18

B. The Enterprises Associated With Petitioners' Patterns Of Racketeering Activity Are Domestic 20

C. Respondents May Recover For Their Injuries From Petitioners' Domestic Conduct, Wherever Those Injuries Arise 22

II. THE ADDITIONAL ALLEGATIONS IN THE COMPLAINT FALL WITHIN RICO'S EXTRATERRITORIAL SCOPE 23

A. RICO Applies Extraterritorially With Respect To Certain Predicate Crimes 23

B. The "Enterprise" Need Not Be Domestic To State A Claim Under RICO 29

1. RICO's focus is on the conduct that Section 1962 makes unlawful 30

2. Petitioners' contrary contention that RICO focuses on the enterprise is incorrect 34

C. Respondents' Injuries Need Not Be Domestic To State A Claim Under RICO 40

1. Longstanding precedent supports foreign plaintiffs' recovery of damages sustained abroad by American defendants' conduct in violation of U.S. law 41

2. Congress intended RICO to reach foreign injuries 43

3. The Solicitor General's argument to limit Section 1964(c) to domestic injuries is unfounded 46

4. Petitioners' attempt to divine a limitation to domestic injuries lacks merit 56

CONCLUSION 60

TABLE OF AUTHORITIES

Page

CASES

Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143 (1987) 16, 30

Armendiaz v. Stillman, 54 Tex. 623 (1881) 23, 41

Bates v. United States, 522 U.S. 23 (1997) 28

Beck v. Prupis, 529 U.S. 494 (2000) 41

Benz v. Compania Naviera Hidalgo, S.A., 353 U.S. 138 (1957) 47-48

Boyle v. United States, 556 U.S. 938 (2009)..... 3

Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014) 28

Carnation Co. v. Pacific Westbound Conference, 383 U.S. 213 (1966) 43

Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962) 43

Daimler AG v. Bauman, 134 S. Ct. 746 (2014) 18-19, 54

Day & Zimmermann, Inc. v. Challoner, 423 U.S. 3 (1975) 41

EEOC v. Arabian American Oil Co., 499 U.S. 244 (1991) 23, 33, 36, 38, 42

F. Hoffman-La Roche Ltd. v. Empagran S.A., 542 U.S. 155 (2004) 48, 49, 50, 58

FAA v. Cooper, 132 S. Ct. 1441 (2012) 24

Foley Bros. v. Filardo, 336 U.S. 281 (1949).....24, 33, 42

Franklin v. Gwinnett Cnty. Pub. Sch., 503 U.S. 60 (1992) 39

Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011) 54

Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) 34

Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)..... 53

H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989) 25, 30, 36

Hartford Fire Ins. Co. v. California, 509 U.S. 764 (1993) 50

Hertz Corp. v. Friend, 559 U.S. 77 (2010)..... 21

Hibbs v. Winn, 542 U.S. 88 (2004) 27

Holmes v. Securities Investor Prot. Corp., 503 U.S. 258 (1992) 43, 44

Ideal Steel Supply Corp. v. Anza, 652 F.3d 310 (2d Cir. 2011) 31

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 54

Johnson v. City of Shelby, 135 S. Ct. 346 (2014)...20, 21

Kasten v. Saint-Gobain Performance Plastics Corp., 563 U.S. 1 (2011) 22

Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659 (2013).....24, 42, 46, 47

Lauritzen v. Larsen, 345 U.S. 571 (1953) 48, 51, 59

Microsoft Corp. v. AT&T Corp., 550 U.S. 437 (2007) 48

Morrison v. National Australia Bank Ltd., 561 U.S. 247 (2010) 12, 13, 18, 23, 24, 26, 29, 30, 33, 36, 42

Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804) 50-51, 54, 55

New York Cent. R.R. Co. v. Chisholm, 268 U.S. 29 (1925) 59

Pasquantino v. United States, 544 U.S. 349 (2005) 29, 30, 33, 34, 38

Personenverkehr AG v. Sachs, 136 S. Ct. 390 (2015) 57

Pfizer, Inc. v. Government of India, 434 U.S. 308 (1978) 43, 44, 45, 46, 55, 59

Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) 53

Rasul v. Bush, 542 U.S. 466 (2004)..... 41

Rotella v. Wood, 528 U.S. 549 (2000) 16, 30, 43

Russello v. United States, 464 U.S. 16 (1983)..... 3, 37

Sale v. Haitian Ctrs. Council, Inc., 509 U.S. 155 (1993) 24, 27

Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985) 14, 17, 22-23, 30, 41, 43, 45, 46

Smith v. Campbell, 782 F.3d 93 (2d Cir. 2015) 21

Smith v. United States, 507 U.S. 197 (1993) 23

Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) 41, 47, 56, 57

United States v. One Assortment of 89 Firearms, 465 U.S. 354 (1984) 26

United States v. Texas, 507 U.S. 529 (1993) 42

United States v. Turkette, 452 U.S. 576 (1981)..... 37

STATUTES

Alien Tort Statute, 28 U.S.C. § 1350 47

Civil Rights Act of 1964, tit. VII, 42 U.S.C. § 2000e *et seq.* 33

Clayton Act, 15 U.S.C. § 12 *et seq.* 2, 40, 43, 44, 45, 47, 58, 59

§ 4, 15 U.S.C. § 15.....17, 40, 43, 44, 45, 47, 58, 59

§ 4(a), 15 U.S.C. § 15(a)..... 43

Controlled Substances Import and Export Act, Pub. L. No. 91-513, tit. III, § 1009, 84 Stat. 1236, 1285, 1289 (1970)..... 5

Eight Hour Law, ch. 352, 27 Stat. 340 (1892) 33

Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* 56, 57, 58

28 U.S.C. § 2680(k)..... 56

Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 et seq. 57, 58

28 U.S.C. § 1603 13

28 U.S.C. § 1605(a)(2)..... 57

Foreign Trade Antitrust Improvements Act of 1982, Pub. L. No. 97-290, tit. IV, 96 Stat. 1233, 1246..... 58

15 U.S.C. § 6a 58

Money Laundering Control Act of 1986, Pub. L. No. 99-570, tit. I, subtit. H, 100 Stat. 3207, 3207-18..... 5

§ 1352(a), 100 Stat. 3207-20 (codified at 18 U.S.C. § 1956(f)) 5

§ 1365(b), 100 Stat. 3207-35..... 5

Racketeer Influenced and Corrupt Organizations Act, Pub. L. No. 91-452, tit. IX, 84 Stat. 922 (codified at 18 U.S.C. § 1961 *et seq.*)..... *passim*

84 Stat. 922-23..... 3, 36

84 Stat. 923..... 3, 30

§ 904(a), 84 Stat. 947..... 3

18 U.S.C. § 1961 .....19, 25

18 U.S.C. § 1961(1) 4, 25, 27

18 U.S.C. § 1961(1)(B) 25

18 U.S.C. § 1961(1)(D) (1970)..... 4

18 U.S.C. § 1961(1)(G)..... 25

18 U.S.C. § 1961(4) 4

18 U.S.C. § 1961(5) 4

18 U.S.C. § 1962 .....3, 15, 16, 25, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 46, 49, 52, 59

18 U.S.C. § 1962(a) 3, 12, 20, 21, 25, 31, 32, 38

18 U.S.C. § 1962(b) 3, 12, 20, 21, 25, 31, 32

18 U.S.C. § 1962(c) 3, 12, 22, 25, 31, 32

18 U.S.C. § 1962(d).....3, 4, 12

18 U.S.C. § 1964 39

18 U.S.C. § 1964(a) 4, 12

18 U.S.C. § 1964(c) 4, 12, 16, 17, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 51, 52, 56, 57, 59, 60

Securities Exchange Act of 1934, § 10(b), 15 U.S.C. § 78j(b)..... 33

Sherman Act, 15 U.S.C. § 1 *et seq.* 49, 58, 59

Travel Act, 18 U.S.C. § 1952 .....11, 14, 29

USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272.....5, 26, 34, 44

§ 813, 115 Stat. 382 5

18 U.S.C. § 37..... 5

18 U.S.C. § 1203..... 5

18 U.S.C. § 1341.....11, 19

18 U.S.C. § 1343.....11, 19

18 U.S.C. § 1952..... 19

18 U.S.C. § 1956.....25, 28

18 U.S.C. § 1956(a)(2).....19, 25

18 U.S.C. § 1956(f).....5, 25, 40

18 U.S.C. §§ 1956-1957..... 11

18 U.S.C. § 2332..... 6

18 U.S.C. § 2332(a) 26

18 U.S.C. § 2332a(b) 26

18 U.S.C. § 2332b..... 5

18 U.S.C. § 2332b(g)(5)(B) 25

18 U.S.C. § 2339B 11, 19, 25, 29

18 U.S.C. § 2339B(d)..... 25

18 U.S.C. § 2340A(a)..... 6, 26

28 U.S.C. § 1332..... 13

LEGISLATIVE MATERIALS

Clayton Act Amendments of 1978: Hearing and Markup Before the Subcomm. on International Economic Policy and Trade of the H. Comm. on International Relations, 95th Cong. (1978) 55

147 Cong. Rec. 20,669 (2001):

p. 20,710 44

H.R. Rep. No. 91-1549 (1970) 37

H.R. Rep. No. 97-686 (1982) 51, 56, 58, 59

Law Enforcement Treaties: Hearing Before the S. Comm. on Foreign Relations, 108th Cong. (2004) 51

S. Rep. No. 91-617 (1969) 37

OTHER MATERIALS

Agreed Statement of Facts Containing Admissions Made Pursuant to s.655 of the Criminal Code, *Her Majesty the Queen in Right of Canada v. Northern Brands Int'l, Inc.* (Ontario Ct. of Justice filed Apr. 13, 2010)..... 7

Brief for the United States as Amicus Curiae Supporting Respondents, *Bank of China, New York Branch v. NBM LLC*, 546 U.S. 1026 (2005) (No. 03-1559), 2005 WL 2875061 45

Brief of *Amicus Curiae* the European Commission in Support of Neither Party, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (Nos. 03-339 & 03-485), 2004 WL 177036..... 52

Brief of the European Commission on Behalf of the European Union as *Amicus Curiae* in Support of Neither Party, *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013) (No. 10-1491), 2012 WL 2165345 52

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, O.J. C 326 (Oct. 26, 2012), http://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en.pdf 6

Declaration of Hon. Franz-H. Brüner, Director-General of OLAF, European Anti-Fraud Office, *European Community v. RJR Nabisco, Inc.*, No. 01-Civ-5188, Document 70-6 (E.D.N.Y. filed Feb. 13, 2002) 9

European Commission:

Press Release No. IP/04/882, "European Commission and Philip Morris International sign 12-year Agreement to combat contraband and counterfeit cigarettes" (July 9, 2004), *available at* http://europa.eu/rapid/press-release_IP-04-882_en.htm?locale=en 7-8

Press Release No. IP/07/1927, "European Commission and JT International (Japan Tobacco) sign 15-year Agreement to combat contraband and counterfeit cigarettes" (Dec. 14, 2007), *available at* http://europa.eu/rapid/press-release_IP-07-1927_en.htm?locale=en 8

Press Release No. IP/10/951, "European Commission and British American Tobacco sign agreement to combat illicit trade in tobacco" (July 15, 2010), *available at* http://europa.eu/rapid/press-release_IP-10-951_en.htm?locale=en 8

Press Release No. IP/10/1179, "European Commission and Imperial Tobacco sign agreement to combat illicit trade in tobacco" (Sept. 27, 2010), *available at* http://europa.eu/rapid/press-release_IP-10-1179_en.htm 8

Gerard E. Lynch, *RICO: The Crime of Being a Criminal*, 87 COLUM. L. REV. 661 (1987) 37

Memorandum for the United States as Amicus Curiae, *Pfizer, Inc. v. Government of India*, 434 U.S. 308 (1978) (No. 76-749), 1977 WL 189361 45

Restatement (First) of Conflicts of Laws (1934) 56

Restatement (Third) of Foreign Relations Law of the United States (1986) 49, 50, 54

Reynolds American Inc., SEC Form 8-K (Apr. 13, 2010) 7

U.S. Dep't of Justice, Press Release, "R.J. Reynolds Affiliate Pleads Guilty, Pays $15 Million in Criminal Fines and Forfeitures as Part of Cigarette Smuggling Operation" (Dec. 22, 1998), *available at* http://www.justice.gov/archive/opa/pr/1998/December/605usa.htm 7

United Nations Convention against Transnational Organized Crime (Palermo Convention), Nov. 15, 2000, 2225 U.N.T.S. 209 51

INTRODUCTION

After an extensive investigation by European governmental officials revealing serious misconduct by petitioners, respondents filed this suit under the common law and the Racketeer Influenced and Corrupt Organizations Act ("RICO") to redress petitioners' widespread racketeering activities. Respondents' complaint alleges petitioners directed money-laundering and other criminal activities from their U.S. headquarters, from which they dispatched U.S. citizen-employees to travel abroad to deal directly with criminal elements. The case concerns claims against U.S. defendants that committed RICO predicate acts through domestic and foreign conduct and caused domestic and foreign injuries to respondents. Because petitioners' illegal scheme had global reach, the complaint also alleges petitioners' unlawful conduct outside the United States as part of a global scheme directed from the United States.

Congress enacted RICO with express extraterritorial scope, limited in a manner consistent with international law. It incorporated predicate statutes that specifically apply to extraterritorial conduct, including conduct that occurs exclusively outside the United States. Congress also adopted language from the Clayton Act with a well-established meaning of extraterritorial application. Traditional tools of statutory interpretation thus demonstrate RICO applies to certain extraterritorial conduct and its civil cause of action provides recovery for injuries suffered abroad.

Petitioners advance two main attacks on that straightforward understanding of Congress's intent, but neither has merit. First, petitioners contend RICO's focus is the "enterprise" rather than the conduct the statute proscribes, and therefore that enter-

prise must be domestic, rather than foreign. Leaving aside that respondents' complaint alleges domestic enterprises, the statute cannot bear petitioners' restrictive construction. RICO's text, structure, and history demonstrate its focus on the *corruption* of enterprises through the commission of predicate acts, whether they are domestic, foreign, or transnational entities. Congress made clear that RICO's prohibition includes such crimes as international money laundering and financial support of terrorist groups. Limiting RICO to domestic enterprises would thus be illogical and self-defeating to the broad purposes this Court has recognized Congress enacted RICO to address.

Petitioners' second attack on RICO's extraterritorial reach – that RICO redresses only domestic *injuries* – also fails. That contention conflicts with centuries-old authority, which confirms that foreigners can resort to U.S. courts to redress injuries caused by Americans. Adhering to that longstanding principle, Congress incorporated into RICO the Clayton Act's remedial language, which had been construed to permit foreigners to sue U.S. entities for injuries sustained abroad. The Solicitor General's separate theory to limit damages to domestic injuries based on comity interests represents a novel and atextual policy preference that cannot override Congress's clear enactment and is in tension with prior Executive Branch representations to this Court. In light of its longstanding jurisprudence that has served the Nation well in the international community, the Court should reject petitioners' novel limitation on RICO's remedial provision.

STATEMENT OF THE CASE

A. Statutory Background

1. In 1970, Congress enacted RICO, Pub. L. No. 91-452, tit. IX, 84 Stat. 922 (codified at 18 U.S.C. § 1961 *et seq.*), to "provid[e] enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." 84 Stat. 923. Congress recognized "organized crime derives a major portion of its power through money obtained from . . . illegal endeavors" and "this money and power are increasingly used to infiltrate and corrupt legitimate businesses and labor unions." *Id.* at 922-23. "[O]rganized crime activities in the United States . . . seriously burden interstate and foreign commerce." *Id.* at 923. "[T]he RICO statute was intended to provide new weapons of unprecedented scope for an assault upon organized crime and its economic roots." *Russello v. United States*, 464 U.S. 16, 26 (1983). Congress intended RICO "to be 'liberally construed to effectuate its remedial purposes.'" *Boyle v. United States*, 556 U.S. 938, 944 (2009) (quoting RICO § 904(a), 84 Stat. 947).

Section 1962 contains RICO's substantive prohibitions. Section 1962(a) makes it "unlawful for any person" "to use or invest" "any income derived . . . from a pattern of racketeering activity" to "acqui[re]" an "interest" in an "enterprise." 18 U.S.C. § 1962(a). Section 1962(b) prohibits "any person through a pattern of racketeering activity . . . to acquire or maintain . . . any interest in or control of any enterprise." *Id.* § 1962(b). Section 1962(c) proscribes "any person employed by or associated with any enterprise . . . to conduct . . . such enterprise's affairs through a pattern of racketeering activity." *Id.* § 1962(c). Section

1962(d) makes it "unlawful for any person to conspire to violate any of the provisions of . . . this section." *Id.* § 1962(d).

Congress defined "racketeering activity" as "any act which is indictable under" any of more than 100 specifically enumerated federal criminal statutes or "any act or threat involving" a variety of crimes "chargeable under State law." *Id.* § 1961(1). It further defined "pattern of racketeering activity" to "require[] at least two acts of racketeering activity." *Id.* § 1961(5). An "enterprise" is "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." *Id.* § 1961(4).

RICO provides civil remedies and imposes criminal sanctions for violations of its substantive prohibitions. Section 1964(c) provides that "[a]ny person injured in his business or property by reason of a violation of [S]ection 1962" may bring a civil action to recover treble damages and attorneys' fees. *Id.* § 1964(c). The statute also provides for equitable relief "to prevent and restrain violations of [S]ection 1962." *Id.* § 1964(a).

2. Congress has included numerous "predicate" crimes in defining "racketeering activity" that apply to extraterritorial conduct. *See* U.S. Br. App. B (listing dozens of "Selected RICO Predicates With Extraterritorial Application"). For example, RICO's original set of predicate crimes included "any offense involving . . . buying, selling, or otherwise dealing in narcotic or other dangerous drugs." 18 U.S.C. § 1961(1)(D) (1970). Congress also criminalized the conduct of "any person to manufacture or distribute a controlled substance . . . intending . . . or knowing

that such substance will be unlawfully imported into the United States." Controlled Substances Import and Export Act, Pub. L. No. 91-513, tit. III, § 1009, 84 Stat. 1236, 1285, 1289 (1970). Congress expressly provided that this RICO predicate "reach[es] acts of manufacture or distribution committed outside the territorial jurisdiction of the United States." *Id.*

Congress has since amended RICO repeatedly to expand its definition of "racketeering activity" to include new predicate crimes with express extraterritorial effect. In 1986, it enacted a new money-laundering statute and included it within the definition of "racketeering activity." Money Laundering Control Act of 1986, Pub. L. No. 99-570, tit. I, subtit. H, § 1365(b), 100 Stat. 3207, 3207-18, 3207-35. Congress expressly provided for "extraterritorial jurisdiction over the conduct prohibited" by the new RICO predicate if the money laundering involved transactions above $10,000 and was committed by a U.S. citizen or, in the case of a non-U.S. citizen, the conduct occurs in part in the United States. *Id.* § 1352(a), 100 Stat. 3207-20 (codified at 18 U.S.C. § 1956(f)).

After al-Qaeda's attacks on September 11, 2001, Congress again amended RICO's definition of "racketeering activity" to include dozens of terrorism-related predicate crimes. *See* USA PATRIOT Act, Pub. L. No. 107-56, § 813, 115 Stat. 272, 382. Congress's amendments to RICO targeted "[a]cts of terrorism transcending national boundaries," 18 U.S.C. § 2332b, such that specific terrorism-related predicates apply extraterritorially by their plain terms. *See, e.g.*, *id.* § 37 (criminalizing certain violence at international airports in the United States or abroad); *id.* § 1203 (criminalizing taking certain

hostages in the United States or abroad). Some apply only to conduct committed abroad. *See, e.g., id.* § 2332 (criminalizing "kill[ing] a national of the United States, while such national is outside the United States"); *id.* § 2340A(a) (making it unlawful to "commit[] or attempt[] to commit torture" while "outside the United States").

B. Respondents' Investigation Of Cigarette Trafficking And Money Laundering

Respondents are the European Community and 26 of its Members States. App. 136a-140a (¶¶ 5-7). The European Community (which became the European Union on December 1, 2009, under the Lisbon Treaty) is a governmental body created by its Member States, which constitute the majority of the nations of Europe. *See* Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, O.J. C 326 (Oct. 26, 2012), http://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en.pdf.

In the 1990s, respondents initiated an investigation into cigarette trafficking into the European Community and through Europe to the Middle East (including Iraq). That investigation, led by the European Anti-Fraud Office (known by its French acronym "OLAF") and its predecessor task force, revealed widespread transnational trafficking and money laundering by petitioners.

OLAF conducted a comprehensive investigation into petitioners' conduct, including cigarette sales and money laundering through criminal channels into and through the European Union. OLAF cooperated with law enforcement authorities in the United States and other nations to combat the misconduct.

Petitioners' affiliates and employees were convicted and substantial fines were imposed in the United States and Canada as a result of petitioners' misconduct in Canada.[1]

Respondents subsequently entered into agreements with petitioners' competitors in the tobacco industry. These agreements committed them to combat illegal trafficking and money laundering and to pay substantial monetary consideration. Specifically, on July 9, 2004, respondents entered into an anti-contraband and anti-counterfeit agreement with Philip Morris International that included agreed-upon protocols and payments in excess of $1 billion over 12 years.[2] On December 14, 2007, respondents

---

[1] *See* Agreed Statement of Facts Containing Admissions Made Pursuant to s.655 of the Criminal Code, *Her Majesty the Queen in Right of Canada v. Northern Brands Int'l, Inc.* (Ontario Ct. of Justice filed Apr. 13, 2010) (petitioners' affiliate pleaded guilty to a criminal conspiracy to defraud Canada and was fined C$75,000,000; R.J. Reynolds Tobacco Company agreed to pay C$325,000,000 to Canada); Reynolds American Inc., SEC Form 8-K, Exhs. 10.2 & 99.1 (Apr. 13, 2010); U.S. Dep't of Justice, Press Release, "R.J. Reynolds Affiliate Pleads Guilty, Pays $15 Million in Criminal Fines and Forfeitures as Part of Cigarette Smuggling Operation" (Dec. 22, 1998) ("An affiliate of R.J. Reynolds Tobacco International Inc. – Northern Brands International Inc. – pleaded guilty today and agreed to pay a total of $15 million in criminal fines and forfeitures for aiding and abetting customers who evaded more than $2.5 million in U.S. excise taxes by fraudulently transporting within the United States cigarettes that were intended to be exported"), *available at* http://www.justice.gov/archive/opa/pr/1998/December/605usa.htm.

[2] *See* European Commission, Press Release No. IP/04/882, "European Commission and Philip Morris International sign 12-year Agreement to combat contraband and counterfeit ciga-

reached an anti-contraband and anti-counterfeit agreement with Japan Tobacco International that included agreed-upon protocols and payments of $400 million over 15 years.[3] On July 15, 2010, respondents entered into a Cooperation Agreement with British American Tobacco that included agreed-upon protocols and payments of $200 million over 20 years.[4] Finally, on September 27, 2010, respondents reached a Cooperation Agreement with Imperial Tobacco Limited that included agreed-upon protocols and payments of $300 million over 20 years.[5]

Alone among the major international tobacco companies, RJR Nabisco, Inc., a major American tobacco manufacturer, and several of its American corporate affiliates (collectively, "RJR"), continue to engage in unlawful business practices and refuse to adopt reforms to eliminate illegal cigarette trafficking and money laundering. After consultation with American

---

rettes" (July 9, 2004), *available at* http://europa.eu/rapid/press-release_IP-04-882_en.htm?locale=en.

[3] *See* European Commission, Press Release No. IP/07/1927, "European Commission and JT International (Japan Tobacco) sign 15-year Agreement to combat contraband and counterfeit cigarettes" (Dec. 14, 2007), *available at* http://europa.eu/rapid/press-release_IP-07-1927_en.htm?locale=en.

[4] *See* European Commission, Press Release No. IP/10/951, "European Commission and British American Tobacco sign agreement to combat illicit trade in tobacco" (July 15, 2010), *available at* http://europa.eu/rapid/press-release_IP-10-951_en.htm?locale=en.

[5] *See* European Commission Press Release No. IP/10/1179, "European Commission and Imperial Tobacco sign agreement to combat illicit trade in tobacco" (Sept. 27, 2010), *available at* http://europa.eu/rapid/press-release_IP-10-1179_en.htm.

authorities,[6] respondents brought this suit in the United States to end petitioners' continued unlawful conduct that harms respondents.

C. Petitioners' Money-Laundering Scheme

The operative complaint alleges grave misconduct by petitioners as revealed by the investigation described above. For more than two decades, RJR has orchestrated a criminal scheme "to sell cigarettes as a means of laundering criminal proceeds – that is, to sell cigarettes to and through criminal organizations and to accept criminal proceeds in payment for cigarettes by secret and surreptitious means." App. 134a-135a (¶ 3); *see also* App. 193a (¶ 112) (RJR "has been responsible for large cigarette sales into illegal channels in the European Community and has received criminal proceeds in payment for their cigarettes"). Petitioners executed their unlawful scheme by "knowingly sell[ing] their products to organized crime, arrang[ing] for secret payments from organized crime, and launder[ing] such proceeds in the United States or offshore venues known for bank secrecy." App. 134a (¶ 2). In particular, petitioners laundered "enormous amounts of Colombian cocaine money and Russian heroin money derived from narcotics sales in the United States and the European Community." App. 166a (¶ 53). Petitioners also sold cigarettes "into Iraq . . . for the benefit of various terrorist groups." App. 178a-179a (¶ 80).

---

[6] *See* Declaration of Hon. Franz-H. Brüner, Director-General of OLAF, European Anti-Fraud Office, ¶ 2, *European Community v. RJR Nabisco, Inc.*, No. 01-Civ-5188, Document 70-6 (E.D.N.Y. filed Feb. 13, 2002) ("I personally informed the United States Department of Justice in July 2000 of the European Commission's intention to file [litigation against RJR]").

High-level managers and employees of RJR directed and controlled that scheme from its headquarters in the United States. For example, RJR employees from the United States regularly traveled to Colombia, met with known money launderers and narcotics traffickers, exchanged large quantities of cigarettes for cash, and then transferred the cash into bank accounts in the United States. App. 174a-177a (¶¶ 70-74). The complaint details a "monthly routine" by RJR employees to "travel[] with authorized RJR distributors [and] ... enter Colombia illegally." App. 174a (¶ 71). These RJR employees "would meet face to face with money launderers and narcotics traffickers" and "would receive payments for cigarettes in the form of bulk cash." *Id.* "The employees ... would then travel back to Venezuela, bribing border guards at the Venezuelan border to ensure that they could move the cash illegally across the border into Venezuela. Once the employees ... reached a major Venezuelan city such as Maracaibo they would ... wire transfer the funds to [RJR's] bank ... in the United States, thereby completing the money-laundering cycle." App. 175a (¶ 71).

The complaint further alleges in detail a variety of other mechanisms petitioners have used to execute their money-laundering scheme. These other mechanisms include selling cigarettes to known criminal organizations in Panama for sale in Europe, App. 170a-171a (¶¶ 65-66); trafficking cigarettes specifically designed for sale in the Middle East through Turkey into Iraq in violation of international sanctions and then laundering the proceeds, App. 178a-179a (¶ 80); and purchasing bonds overseas using the proceeds of illicit cigarette sales to criminal organiza-

tions and selling those bonds in the United States to conceal the source of the revenue, App. 175a-177a (¶¶ 73-74). At every step, RJR structured its transactions to shield them from detection by United States and European authorities. App. 167a, 172a-174a (¶¶ 56, 69).

In 2004, RJR used a substantial portion of the proceeds of this illegal money-laundering scheme to acquire the U.S. operations of Brown & Williamson ("B&W"), the U.S. subsidiary of British American Tobacco. App. 188a-190a, 251a-253a (¶¶ 100-103, 162-163). RJR previously had sold its international operations to Japan Tobacco International. App. 151a (¶ 29). RJR targeted B&W because it knew the latter's brands were popular in Europe and that the acquisition would expand its capacity to launder criminal proceeds through the sale of cigarettes destined for European markets. App. 189a (¶ 102). RJR integrated its newly acquired B&W operations into its unlawful schemes and used B&W to expand their scope. App. 189a-190a (¶¶ 102-103).

D. Proceedings Below

1. Respondents brought suit against petitioners in the Eastern District of New York for claims under the common law and RICO, seeking damages and equitable relief. App. 135a-136a (¶ 4).

The complaint alleges petitioners engaged in a pattern of racketeering activity consisting of money laundering, 18 U.S.C. §§ 1956-1957; providing material support to foreign terrorist organizations, *id.* § 2339B; mail fraud, *id.* § 1341; wire fraud, *id.* § 1343; and violations of the Travel Act, *id.* § 1952. The bulk of the conduct constituting those unlawful acts took place in the United States. That domestic

conduct included directing and orchestrating the scheme from petitioners' corporate headquarters in Winston Salem and New York; the use of the mail and wires in the United States to coordinate the execution of the scheme; receipt and laundering of the proceeds of unlawful conduct in its accounts in New York financial institutions; and interstate and international travel from New York and Miami in furtherance of its criminal activities. App. 134a, 174a-188a (¶¶ 2, 70-99).

The complaint alleges violations of Sections 1962(a)-(d) based on that predicate racketeering activity. Petitioners violated Section 1962(a) by investing the proceeds of this pattern of racketeering in B&W. App. 188a-190a (¶¶ 100-103). Petitioners violated Sections 1962(b) and (c) by acquiring and maintaining control of, and conducting the affairs of, its money-laundering enterprise through that pattern of racketeering activity. App. 253a-256a (¶¶ 166-173). Petitioners are liable under Section 1962(d) for conspiring together and with others to violate RICO's substantive prohibitions. App. 257a-260a (¶¶ 174-180). The complaint alleges that respondents were injured by reason of petitioners' RICO violations in numerous ways. App. 210a-229a (¶¶ 146-148). The complaint seeks compensatory damages under Section 1964(c) and injunctive relief under Section 1964(a) requiring petitioners to cease their unlawful conduct. App. 229a-234a (¶¶ 149-154).

2. Petitioners moved to dismiss respondents' RICO claims. App. 40a. After this Court decided *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), the district court ordered supplemental briefing to address the decision's effect on those

claims. On March 8, 2011, the district court granted petitioners' motion to dismiss on the ground that RICO does not apply to activity outside the United States and cannot apply to a foreign enterprise. App. 37a-54a.[7]

3. The court of appeals reversed. App. 1a-36a. The court "[r]ecogniz[ed] that there is a presumption against extraterritorial application of a U.S. statute unless Congress has clearly indicated that the statute applies extraterritorially," and it "conclude[d] that, with respect to a number of offenses that constitute predicates for RICO liability and are alleged in this case, Congress has clearly manifested an intent that they apply extraterritorially." App. 3a (citing *Morrison*). The court further recognized that RICO "incorporates by reference various federal criminal statutes" that "unambiguously and necessarily involve extraterritorial conduct." App. 9a-10a. The court explained that, "[b]y incorporating these statutes into RICO as predicate racketeering acts, Congress has clearly communicated its intention that RICO apply to extraterritorial conduct to the extent that extraterritorial violations of those statutes serve as the basis for RICO liability." App. 11a.

The court of appeals "reject[ed] . . . the district court's conclusion . . . that RICO has an exclusive focus on the location of the enterprise, which alone

---

[7] The district court also dismissed respondents' state common-law claims on the ground that the court lacked diversity jurisdiction, reasoning that the European Community is not an organ of a foreign state under 28 U.S.C. §§ 1332 and 1603. App. 2a. The court of appeals reversed that holding. App. 3a. Petitioners do not challenge that aspect of the Second Circuit's judgment in this Court.

determines whether a particular application is impermissibly extraterritorial." App. 16a n.6. The court therefore refused to impose a "requirement that the defendant be . . . associated with a domestic enterprise in order to sustain RICO liability." App. 14a.

Applying those holdings, the court of appeals concluded that respondents' claims based on money laundering and material support of terrorism "meet the statutory requirements for extraterritorial application of RICO." App. 16a-18a. The court further concluded that the complaint alleged "domestic conduct" and a "domestic cause of action" with respect to petitioners' mail fraud, wire fraud, and violations of the Travel Act. App. 18a-21a, 23a. The court therefore held that the complaint states a claim under RICO for the alleged predicate crimes. App. 3a.

4. The court of appeals denied petitioners' requests for panel rehearing and rehearing en banc. The panel rejected petitioners' contention that RICO "requires private plaintiffs to allege a domestic injury." App. 55a. It explained that "[t]he presumption against extraterritoriality . . . is primarily concerned with the question of what *conduct* falls within a statute's purview." App. 58a. Relying on this Court's decision in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), the panel "look[ed] to the relevant predicate statute to determine whether the injury caused by a violation thereof must be domestic." App. 57a. It concluded that, "[i]f an injury abroad was proximately caused by the violation of a statute which Congress intended should apply to injurious conduct performed abroad," there is "no reason to import a domestic injury requirement

simply because the victim sought redress through the RICO statute." App. 57a-58a.

The Second Circuit also denied petitioners' request for rehearing en banc, with Judge Hall concurring separately. App. 59a-60a. Judge Lynch dissented from that order on the ground that the case warranted en banc review but agreed with the panel's holding on RICO's extraterritorial scope. App. 97a-98a. Judges Jacobs, Cabranes, Livingston, and Raggi dissented from the denial expressing their disapproval of the panel's holding. App. 60a.

SUMMARY OF ARGUMENT

I. The complaint alleges domestic RICO violations. Petitioners are all American corporations domiciled in the United States. The complaint alleges petitioners engaged in racketeering activity that indisputably took place in the United States and involved indisputably domestic enterprises. The complaint therefore states claims for domestic violations of RICO based on domestic conduct.

II. The remaining allegations in the complaint fall within RICO's permissible extraterritorial scope.

A. Congress spoke with perfect clarity that a violation of Section 1962 may be based on conduct abroad that violates a predicate statute that itself has extraterritorial application. Numerous RICO predicates have express extraterritorial effect, including some that have exclusively extraterritorial application. Congress's inclusion of those predicates in RICO's definition of "racketeering activity" would have been meaningless if the pattern could not include violations of those predicates. To the extent the complaint alleges RICO violations based on con-

duct abroad, that conduct violates predicate statutes with express extraterritorial application and therefore fall within RICO's territorial scope.

B. RICO focuses on the conduct it makes unlawful: investing in, acquiring or maintaining control of, or conducting the affairs of an enterprise through a pattern of racketeering activity. This Court repeatedly has explained that "the heart of any RICO complaint is the allegation of a pattern of racketeering." *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 154 (1987) (emphasis omitted); *Rotella v. Wood*, 528 U.S. 549, 557 (2000) ("object of civil RICO" is to eliminate "racketeering activity"). RICO's text, structure, and history confirm that Congress focused on the evil it sought to combat: the "infiltration and control" of organizations using patterns of racketeering activity.

Petitioners' contrary arguments lack merit. Indeed, they concede that "it is the *corrupting influence on the enterprise* that is ultimately the touchstone for RICO liability; that is the common focus of [Section] 1962." Pet. Br. 30. Their attempts to avoid the implications of that concession fail. RICO's text, structure, and history provide no support for their claim that Congress's primary concern was the enterprise rather than the conduct Section 1962 proscribes. Because Section 1962 focuses on the conduct it makes unlawful rather than the enterprise, it applies to a defendant's conduct within RICO's territorial scope, regardless where the enterprise may be located.

C. Section 1964(c) provides a cause of action to recover for injuries to a plaintiff's "business or property" "by reason of a violation of [S]ection 1962," regardless of where that injury is suffered. American

courts have always been open to plaintiffs who suffer injuries abroad caused by conduct that violated American law. Congress modeled Section 1964(c) on Section 4 of the Clayton Act, which this Court held and Congress understood encompasses foreign injuries. Against that background, Congress enacted Section 1964(c) to apply to injuries abroad as well. This Court accordingly has applied Section 1964(c) to foreign injuries. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985).

The Court should reject both the Solicitor General's and petitioners' contrary arguments. The Solicitor General's argument invoking comity considerations contravenes Congress's clear intent that Section 1964(c) applies to injuries abroad, and in any event invents a new comity canon that has no basis in this Court's cases or in international law. The Solicitor General's argument is particularly misplaced in this case, which was brought by 26 sovereign foreign states that are among the United States' closest and oldest allies, and the European Community that was founded by them. Any comity concerns implicated by other cases brought in different circumstances are adequately addressed by other legal doctrines that may bar such suits. Finally, petitioners mistakenly argue that RICO is limited to domestic injuries, but neither state choice-of-law principles nor this Court's cases compel the conclusion that Section 1964(c) is limited to domestic injuries.

ARGUMENT

I. THE COMPLAINT ALLEGES DOMESTIC RICO VIOLATIONS

Before addressing the issue of RICO's extraterritorial reach, respondents note this case requires only a domestic application of RICO. The complaint alleges indisputably domestic RICO violations, and so regardless of its resolution of the Question Presented the Court should reject petitioners' invitation (at 56-60) to order dismissal. Where the facts underlying every aspect of a claim are domestic, the application of the statute is domestic, and the presumption against extraterritoriality is not implicated. *See Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 267 n.9 (2010). That is true here: the complaint alleges that American defendants engaged in patterns of racketeering activity on American soil involving American enterprises that give rise to RICO violations in the United States. No court has ruled on the sufficiency of those allegations. Accordingly, even if the Court rules that RICO lacks extraterritorial effect with respect to any aspect of the factual elements of a claim, respondents' remaining claims should proceed in district court.

A. The Complaint Alleges Domestic Racketeering Conduct

Petitioners (defendants below) are exclusively American corporations, with headquarters and operations based in the United States, where their pattern of racketeering activity was directed and managed. App. 140a-150a, 203a-204a (¶¶ 8-26, 135). Indeed, petitioners' contacts are so extensive that they clearly satisfy the standard for general personal jurisdiction in a domestic forum. *See Daimler AG v.*

Bauman, 134 S. Ct. 746, 760 (2014) ("With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction.'") (citation omitted; alterations in original).

Petitioners engaged in a pattern of racketeering activity in the United States. The complaint alleges petitioners:

- Received funds in the United States that they knew to be the proceeds of illegal narcotics trafficking and the proceeds of terrorist activity, in violation of 18 U.S.C. § 1956(a)(2). App. 238a-248a (¶ 159(a)-(i)).
- Traveled using the facilities of interstate commerce in the United States in furtherance of unlawful activity, in violation of 18 U.S.C. § 1952. App. 249a-250a (¶ 159(l)).
- Provided material support to a foreign terrorist organization "in the United States and elsewhere" in violation of 18 U.S.C. § 2339B. App. 248a (¶ 159(j)).
- Used the U.S. mails and wires in the United States in furtherance of a "scheme or artifice" in violation of 18 U.S.C. §§ 1341 and 1343. App. 248a-249a (¶ 159(k)).

RICO enumerates all of these statutes as predicates. *See* 18 U.S.C. § 1961. These allegations thus constitute a wholly domestic pattern of racketeering activity.

B. The Enterprises Associated With Petitioners' Patterns Of Racketeering Activity Are Domestic

1. Petitioners have violated Sections 1962(a) and (b) involving a domestic enterprise. *First*, certain petitioners violated those provisions by acquiring B&W, an American corporation and therefore indisputably a domestic enterprise. By that acquisition, they invested in B&W using the income and proceeds of their pattern of racketeering activity, thereby violating Section 1962(a). They also acquired and maintained control of B&W through their pattern of racketeering activity, thereby violating Section 1962(b). App. 188a-200a (¶¶ 100-130).

Contrary to petitioners' contention (at 57-58) that "the complaint never alleges that B&W was the RICO enterprise," the complaint plainly and extensively alleges (at App. 188a-200a (¶¶ 100-130)) that petitioners acquired B&W using the proceeds of a pattern of racketeering activity. Petitioners err by looking solely at the phrasing of a single paragraph in Count 1 rather than the complaint in its entirety. *See* Pet. Br. 57-58 ("B&W is not so much as mentioned in Count 1 of the complaint.").

That blinkered focus on a single statement is inconsistent with the basic principles of notice pleading. *See Johnson v. City of Shelby*, 135 S. Ct. 346, 347 (2014) (per curiam) (noting under Federal Rules "it is unnecessary to set out a legal theory" in complaint) (internal quotations omitted). Accordingly, "[w]hen, as in this case, plaintiffs have 'informed [the defendant] of the factual basis for their complaint, they [are] required to do no more to stave off threshold dismissal for want of an adequate statement of

their claim.'" *Smith v. Campbell*, 782 F.3d 93, 99 (2d Cir. 2015) (quoting *Johnson*, 135 S. Ct. at 347) (first alteration added).

Second, petitioners also violated Sections 1962(a) and (b) by investing the proceeds of a pattern of racketeering activity in what the complaint calls the "RJR Money-Laundering Enterprise," App. 251a-253a (¶¶ 162-163), and acquiring and maintaining an interest in that enterprise through a pattern of racketeering activity, App. 254a-255a (SAC ¶ 168). The district court found, using an incorrect legal standard derived from *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), that the RJR Money-Laundering Enterprise was foreign. *See* App. 51a-52a. That holding was error. The district court omitted addressing the RJR Money-Laundering Enterprise's extensive presence in and connection to the United States, including the fact that the American RJR defendants were an integral part of the enterprise, App. 237a-250a (¶¶ 157-159), and directed and controlled the enterprise from the United States, *see, e.g.*, App. 162a (¶ 49) ("The RJR DEFENDANTS, jointly and as individual corporations, control, direct, encourage, support, promote, and facilitate [the relevant] criminal activities"); App. 256a (¶ 172).

The court of appeals never ruled on the domestic nature of the RJR Money-Laundering Enterprise, and this Court should reject petitioners' invitation (at 57) to resolve the issue in the first instance.[8]

---

[8] Contrary to petitioners' passing contention (at 57), respondents did not waive any argument relating to this issue. The certiorari petition never made an argument relating to the application of the *Hertz* test, and respondents were therefore under no obligation to address in their brief in opposition a

Accordingly, if this Court determines that issue to be dispositive of any aspect of this case, it should remand the case to the court of appeals to address the question. *See* Pet. Br. 60 (arguing in the alternative for remand).

2. Petitioners also violated Section 1962(c) with respect to a domestic enterprise. *First*, petitioners conducted the affairs of the RJR Money-Laundering Enterprise (itself a domestic enterprise) through a pattern of domestic racketeering activity. *See supra* p. 21. *Second*, each petitioner individually conducted the affairs of the association-in-fact including the group of American RJR entities. That association-in-fact is plainly domestic. Indeed, petitioners themselves suggest (at 40) that a domestic RICO claim may be sustained on the basis of a "distinct domestic enterprise" composed of the American "emissaries" of a larger transnational enterprise. The complaint clearly alleges facts supporting that legal theory. *See, e.g.*, App. 184a-185a (¶¶ 91-93).

C. Respondents May Recover For Their Injuries From Petitioners' Domestic Conduct, Wherever Those Injuries Arise

The complaint's allegations that American defendants engaged in domestic misconduct relating to domestic enterprises support a claim for damages wherever those damages occur. Courts have long recognized that a plaintiff may recover in American courts for injuries sustained abroad that are caused by such domestic conduct. *See, e.g., Sedima, S.P.R.L.*

---

legal argument not passed upon by the court of appeals and not raised by the petition. *See Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 17 (2011).

v. Imrex Co., 473 U.S. 479 (1985) (civil RICO case for injuries suffered in Belgium); *Armendiaz v. Stillman*, 54 Tex. 623, 628 (1881) ("the action may be maintained" in an American court where the "act causing the damage was committed in [Texas], where the suit is brought, and not in Mexico, where the damage was sustained"). Respondents may therefore recover in an American court for the injuries, wherever located, they suffered by reason of petitioners' unlawful conduct committed in the United States.

Because respondents' claims are based on domestic misconduct committed by American defendants, those claims do not constitute an extraterritorial application of RICO. The presumption against extraterritoriality, therefore, does not foreclose the complaint from advancing past the pleadings stage.

II. THE ADDITIONAL ALLEGATIONS IN THE COMPLAINT FALL WITHIN RICO'S EXTRATERRITORIAL SCOPE

A. RICO Applies Extraterritorially With Respect To Certain Predicate Crimes

1. A statute applies abroad where Congress has provided a "clear indication of an extraterritorial application." *Morrison*, 561 U.S. at 255. Although "Congress *ordinarily* legislates with respect to domestic, not foreign matters," *id.* (citing *Smith v. United States*, 507 U.S. 197, 204 n.5 (1993)) (emphasis added), that presumption yields where "there is the affirmative intention of the Congress clearly expressed," *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991) ("*Aramco*") (internal quotations omitted).

This Court therefore gives a statute extraterritorial effect when the traditional tools of statutory interpretation indicate Congress intended that its enactment apply abroad. In *Morrison*, the Court rejected the claim that "the presumption against extraterritoriality is a 'clear statement rule,' if by that it is meant a requirement that a statute say 'this law applies abroad.'" 561 U.S. at 265 (citation omitted). Instead, it emphasized that "[a]ssuredly context can be consulted as well" and confirmed that a court should rely on "whatever sources of statutory meaning . . . give 'the most faithful reading' of the text." *Id.* (citation omitted). As this Court recently reaffirmed, a "canon of interpretation [that] requires an unmistakable statutory expression of congressional intent . . . [has] never required that Congress use magic words." *FAA v. Cooper*, 132 S. Ct. 1441, 1448 (2012). Rather, the Court "require[s] [only] that the scope of Congress' [intent] be clearly discernable from the statutory text in light of traditional interpretive tools." *Id.* Accordingly, this Court repeatedly has relied on the full range of "sources of statutory meaning" to discern Congress's intention regarding the territorial scope of a statute. *See, e.g.*, *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1666 (2013); *Morrison*, 561 U.S. at 262; *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 176-77 (1993); *Foley Bros. v. Filardo*, 336 U.S. 281, 285-86 (1949).

2. Congress provided a "clear indication" that RICO applies extraterritorially in certain limited circumstances. By incorporating predicate crimes with express extraterritorial effect into RICO's definition of "racketeering activity," Congress left no doubt that the conduct constituting a "pattern of

racketeering activity" may take place abroad to the extent that the particular predicate crimes at issue themselves apply extraterritorially.

The Court "begin[s], of course, with RICO's text, in which Congress followed a pattern of utilizing terms and concepts of breadth." *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 237 (1989) (internal quotations and alteration omitted). Section 1962 proscribes engaging in a "pattern of racketeering activity" where an "enterprise" is the prize, victim, or vehicle of that unlawful conduct. 18 U.S.C. § 1962(a)-(c). Section 1961 in turn defines "racketeering activity" to include numerous predicate crimes with express extraterritorial effect, including several at issue in this case. *Id.* § 1961(1).

For example, Section 1961(1)(B) lists as a predicate crime 18 U.S.C. § 1956, "relating to the laundering of monetary instruments." *Id.* § 1961(1)(B). Section 1956 prohibits the transfer of money "to a place in the United States from or through a place outside the United States" intending to promote unlawful activity or knowing that the funds were proceeds of unlawful activity, *id.* § 1956(a)(2), and expressly provides for "extraterritorial jurisdiction" in certain circumstances, *id.* § 1956(f). Similarly, Section 1961(1)(G) specifies as a predicate "any act that is indictable under any provision listed in section 2332b(g)(5)(B)," *id.* § 1961(1)(G), which includes 18 U.S.C. § 2339B, "relating to providing material support to terrorist organizations," *id.* § 2332b(g)(5)(B). Section 2339B(d) provides for "extraterritorial jurisdiction" "over an offense" when certain criteria are met. *Id.* § 2339B(d). Congress's inclusion of these extraterritorial predicate crimes was intentional: it enumerated dozens

of such predicates, including numerous terrorism-related predicates added to RICO in the Patriot Act as part of Congress's calculated effort to combat terrorist organizations at home and abroad. *See* U.S. Br. App. B (listing "Selected RICO Predicates With Extraterritorial Application").

RICO's text thus speaks with clarity that a "pattern of racketeering activity" may arise out of conduct abroad that violates predicate statutes that themselves apply extraterritorially. Congress's enumeration of those predicates in RICO's text is an express and unmistakable statement that certain extraterritorial conduct falls within its prohibition. This Court has recognized that a statute speaks clearly when it incorporates by reference the terms of another statutory provision. *See, e.g., United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 363 (1984) ("Congress' intent . . . is most clearly demonstrated by the procedural mechanisms it established . . . [by] incorporat[ing] by reference the procedures of [a separate provision]."). To hold otherwise here would be to ignore the "context" this Court insisted should be "consulted" and to impose just the sort of "clear statement," magic-words requirement rejected in *Morrison*. 561 U.S. at 265.

Moreover, any interpretation that denies RICO's extraterritorial scope cannot be reconciled with Congress's enumeration of predicate crimes that apply *only* overseas. *See, e.g.*, 18 U.S.C. § 2332(a) (homicide of "a national of the United States, while such national is outside the United States"); *id.* § 2332a(b) (use of "a weapon of mass destruction outside of the United States"); *id.* § 2340A(a) (torture committed "outside the United States"). Congress's

inclusion of those predicate crimes in Section 1961(1)'s definition of "racketeering activity" would have been pointless if RICO's substantive prohibitions could not encompass a "pattern of racketeering activity" involving violations of those predicates. This Court repeatedly has explained that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (internal quotations omitted). That principle applies with full force in applying the presumption against extraterritoriality. *See, e.g.*, *Sale*, 509 U.S. at 174 (avoiding interpretation that would render text "redundant"). Accordingly, because Congress's inclusion of extraterritorial predicate crimes in RICO is meaningful only if a pattern of racketeering activity may take place abroad to the same extent, RICO's text clearly demonstrates that Congress intended the statute to have a certain extraterritorial reach.

3. Petitioners do not seriously dispute that RICO applies to certain extraterritorial patterns of racketeering activity. *See, e.g.*, Pet. Br. 41 (RICO's "chain of incorporation . . . suggests that such foreign patterns are covered in connection with *domestic* enterprises"). *Cf. id.* at 42-43. Rather, they briefly speculate that Congress could have incorporated extraterritorial predicates without intending RICO to apply to conduct abroad, but that assertion conflicts with the statute's text. They first hypothesize (at 43) that Congress might have incorporated predicates that by their terms apply both domestically and abroad intending RICO to encompass only those predicates' domestic applications. That contention, however, manufactures a distinction where Congress made

none. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2769 (2014) ("To give th[e] same words a different meaning for each category would be to invent a statute rather than interpret one.") (internal quotations omitted; alteration in original).

Petitioners' further suggestion (at 43) that "Congress could have meaningfully incorporated [predicates with exclusively extraterritorial effect] solely for when such offenses are part of a broader pattern whose overall locus is domestic" is similarly illogical. Petitioners do not explain how the "locus" of a pattern could be different than the location of the conduct that constitutes that pattern. Moreover, they appear to concede that overseas violations of extraterritorial predicates can be part of a "pattern of racketeering activity" but invent an atextual "overall locus of the pattern" requirement that Congress did not enact. If they mean to suggest that conduct violating an extraterritorial predicate can form part of a pattern of racketeering activity but only if some critical portion of the predicate acts occurs domestically, they again fabricate a condition that appears nowhere in the statute. *See Bates v. United States*, 522 U.S. 23, 29 (1997) (the Court will "ordinarily resist reading words or elements into a statute that do not appear on its face").

4. The court of appeals correctly determined that the racketeering activity alleged in the complaint falls within RICO's geographic scope. The complaint alleges petitioners engaged in money laundering in violation of 18 U.S.C. § 1956, which by its terms applies extraterritorially in prescribed circumstances. *See* App. 239a-248a, 256a (¶¶ 159(a)-(i), 172). The complaint further alleges petitioners engaged in

material support of a foreign terrorist organization in violation of 18 U.S.C. § 2339B, which also expressly applies abroad. *See* App. 248a (¶ 159(j)). The court of appeals also correctly held, and petitioners do not dispute, that petitioners' mail fraud, wire fraud, and violations of the Travel Act were based on "domestic conduct." App. 20a. Accordingly, because all of the racketeering activity alleged in the complaint is either domestic or permissibly extraterritorial under RICO, respondents have stated a claim under the statute.

B. The "Enterprise" Need Not Be Domestic To State A Claim Under RICO

Petitioners are mistaken that RICO requires the "enterprise" – the prize, victim, or vehicle of the conduct the statute makes unlawful – to be domestic. When the presumption against extraterritoriality has been "answer[ed]" with respect to the statute's focus, *Morrison*, 561 U.S. at 266, no further limitations on the statute's territorial scope are warranted. *See id.* at 267 n.9 ("If § 10(b) [of the Securities Exchange Act of 1934] did apply abroad, we would not need to determine which transnational frauds it applied to; it would apply to all of them."); *Pasquantino v. United States*, 544 U.S. 349, 371 (2005) (holding mail and wire fraud statute applies to scheme to defraud Canada of tax revenues abroad because conduct was domestic). Petitioners agree. *See* Pet. Br. 21 ("Where the matters that were Congress's 'focus' all occur domestically, the contested application is domestic even if other foreign contacts are present, and thus the presumption against extraterritoriality does not arise.") (citing *Pasquantino*, 544 U.S. at 371). Accordingly, the proper question is

whether RICO's focus is the racketeering conduct the statute makes unlawful. Once that proposition is demonstrated, it follows that Congress imposed no further requirement that the enterprise be domestic.

1. RICO's focus is on the conduct that Section 1962 makes unlawful

This Court has recognized that "the heart of any RICO complaint is the allegation of a pattern of racketeering activity." *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 154 (1987) (emphasis omitted); *see also H.J. Inc.*, 492 U.S. at 236 ("RICO's key requirement [is] a pattern of racketeering"). RICO thus "seeks to regulate," *Morrison*, 561 U.S. at 267 (internal quotations omitted), the various ways that criminals can "infiltrate and corrupt" organizations through their unlawful conduct, 84 Stat. 923. Because that "conduct is what the Government is punishing in [RICO] prosecution[s]," *Pasquantino*, 544 U.S. at 371, "[t]hose acts are, when committed in the circumstances delineated in [Section] 1962(c), [the] activity which RICO was designed to deter," *Sedima*, 473 U.S. at 497 (internal quotations omitted); *see also Rotella v. Wood*, 528 U.S. 549, 557 (2000) ("The object of civil RICO is . . . to turn [victims] into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity."). The pattern of racketeering conduct identified by Section 1962 is therefore the statute's focus.

Congress understood the particular evils arising from organized crime using its "money and power . . . *to infiltrate and corrupt* legitimate business and labor unions and to subvert and corrupt our democratic processes." 84 Stat. 923 (emphasis added). *Cf.* Pet. Br. 28-29. This express legislative purpose demonstrates

that Congress enacted RICO to attack the means by which criminals expand the reach of organized crime and not to serve as a catch-all series of regulations for "enterprises."

Section 1962's subsections address those criminal means by targeting three ways Congress recognized criminals could "infiltrate and corrupt" organizations through coordinated patterns of criminal conduct. First, Congress made it unlawful to "use or invest . . . the proceeds" of "a pattern of racketeering activity" to "acqui[re,] . . . establish[] or operat[e]" an enterprise. 18 U.S.C. § 1962(a). Second, Congress made it unlawful "to acquire or maintain . . . control of any enterprise" "through a pattern of racketeering activity." *Id.* § 1962(b). Third, Congress made it unlawful to "conduct [an] enterprise's affairs through a pattern of racketeering activity." *Id.* § 1962(c). In each subsection, Congress proscribed certain patterns of racketeering activity that target enterprises – a manifest indication that Congress's concern was eradicating the patterns of racketeering activity that criminals use to run and grow their criminal operations.[9]

---

[9] Sections 1962(b) and (c) proscribe engaging in a pattern of racketeering activity either to acquire or to conduct the affairs of an enterprise. The conduct made unlawful by Sections 1962(b) and (c) – the acquiring or conducting – necessarily occurs in the same place as the pattern of racketeering activity through which a criminal does the acquiring or conducting. By contrast, Section 1962(a) makes unlawful the distinct conduct of investing the proceeds of a pattern of racketeering activity to obtain an interest in an enterprise. *See Ideal Steel Supply Corp. v. Anza*, 652 F.3d 310, 321 (2d Cir. 2011). The pattern of racketeering activity that generates those proceeds may occur in a different location from where the subsequent investment of the proceeds is made. Because petitioners' investment of the proceeds of their pattern of racketeering activity to acquire

RICO thus focuses on the verbs, not the nouns, of its statutory prohibitions.

Petitioners therefore fundamentally misunderstand RICO's structure by arguing (at 31) that RICO "does not target stand-alone patterns of racketeering" to infer that "the statute [does not] focus[] on racketeering *simpliciter*." Section 1962 concerns the patterns of racketeering activity not because it criminalizes "racketeering *simpliciter*," Pet. Br. 31. Rather, Section 1962's focus is to make it unlawful to "invest" the proceeds of "a pattern of racketeering activity" in an enterprise; "acquire or maintain . . . control" of an enterprise "through a pattern of racketeering activity"; and "conduct [an] enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(a)-(c). Section 1962 thus makes unlawful the investing of proceeds *of*, the acquiring of control *by*, and the conducting of affairs *through* patterns of racketeering activity. Prohibiting that conduct is the statute's focus.

Section 1962's prohibition therefore reaches a defendant who acquires control or conducts the affairs of an enterprise through a domestic pattern of racketeering activity, regardless of whether that enterprise is "located" in the United States or abroad. And, because Section 1962 makes no distinction in the scope of its application among the predicate crimes on which a violation is based, there is no warrant to impose a distinct requirement that the

---

their controlling interest in the domestic assets of B&W indisputably took place in the United States, the Court need not decide in this case whether the focus of Section 1962(a) is the pattern of racketeering activity itself or the investment of the proceeds of that racketeering. *See* App. 13a-14a n.5.

enterprise be domestic when a defendant's pattern of racketeering involves extraterritorial conduct within RICO's permissible geographic scope.

This Court's cases support the conclusion that Section 1962 focuses on the proscribed conduct. *Cf. Morrison*, 561 U.S. at 266 (recognizing focus of Section 10(b) is "deceptive conduct 'in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered'") (quoting 15 U.S.C. § 78j(b)). In *Foley*, this Court held that the Eight Hour Law, which limits the workday for employees of contractors engaged by the United States, did not apply to work performed in Iran and Iraq. 336 U.S. at 285. Both the worker and the contractor were American, but the Court recognized that the statute regulated, and therefore focused on, the work performed rather than the entities engaged in the employment transaction. Similarly, in *Aramco*, the Court held that Title VII did not "apply to United States citizens employed by American employers outside the United States" because the statute's focus was again on the discriminatory employment itself rather than on either the victim or the perpetrator of the alleged violation. 499 U.S. at 248, 257. And, in *Pasquantino*, the Court held that the wire fraud statute applied to a scheme "us[ing] U.S. interstate wires . . . to defraud a foreign sovereign of tax revenue." 544 U.S. at 371. The Court explained that this application "of the wire fraud statute does not give it 'extraterritorial effect,'" even though the entity defrauded was a foreign sovereign, because the "domestic element of petitioners' conduct is what the Government is punishing in th[at] prosecution."

Id. Those cases recognize that Congress typically focuses on the situs of the relevant conduct rather than the location of the entities subject to that regulation.

Finally, petitioners' position conflicts with the logic of the statute and entails perverse outcomes that Congress could not have intended. Petitioners' interpretation would mean that RICO could not reach the agents or employees of a foreign enterprise who enter the United States to conduct its affairs through domestic patterns of racketeering activity. Congress had no reason to enact a statute that provides powerful criminal sanctions and civil remedies to combat domestic racketeering relating to a domestic enterprise but that would be inapplicable to the exact same conduct when committed in service of a foreign entity operating on American soil. Petitioners' attempt to limit RICO to domestic enterprises is especially illogical with respect to the terrorism-related predicates that Congress added to RICO as part of the Patriot Act. Petitioners offer no persuasive reason why Congress would have enacted those provisions to target only domestic terrorist enterprises and to exclude RICO's application to the very organization whose attack had inspired Congress to act. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 574 (1982) (Court will not adopt interpretation that "would produce an absurd and unjust result which Congress could not have intended").

2. Petitioners' contrary contention that RICO focuses on the enterprise is incorrect

Petitioners' assertion that Congress focused on the enterprise is unpersuasive, as even they ultimately

concede. Petitioners themselves reveal Congress's critical focus on the *conduct* Section 1962 makes unlawful by repeatedly referring to RICO's target as the "corrupt infiltration and control of businesses," "enterprise corruption," and the like. *See, e.g.*, Pet. Br. 26 ("RICO's innovation was therefore to focus on how organized crime would corrupt 'enterprises.'") (citation omitted); *id.* at 29 ("[T]he statutory structure tracks the various ways organized crime typically co-opts and controls businesses, unions, and other organizations."); *id.* at 44 (Section 1962 "operates to *prohibit the wrongful conduct* of corrupting enterprises in specified ways").

That consistent phrasing is telling. Even when petitioners try to emphasize the enterprise, the logic of the statutory text compels a focus on the racketeering activity that criminals use to infiltrate and corrupt organizations. Indeed, petitioners concede their case: "[I]t is the *corrupting influence on the enterprise* that is ultimately the touchstone for RICO liability; that is the common focus of [Section] 1962." *Id.* at 30; *see also id.* at 34 ("the indisputable focus of [Section] 1962 is on preventing the corruption of enterprises").

Petitioners' attempts to avoid the implications of that core concession lack merit.

a. Petitioners err in suggesting (at 26-28) that RICO's text evinces a focus on the enterprise rather than on the pattern of racketeering activity. *First*, petitioners mistakenly rely on RICO's title to support that claim. This Court previously rejected the argument that "RICO's broad language should be read narrowly so that the Act's scope is coextensive" with "Congress' purpose in enacting RICO" as allegedly

"revealed in the Act's title." *H.J. Inc.*, 492 U.S. at 245. Moreover, petitioners attempt (at 26-27) to prove their point simply by italicizing the word "Organizations." But that simply ignores the other three words in RICO's title, which (if anything) emphasize Congress's focus on criminals' "racketeer[ing]" to "influence[]" and "corrupt" those organizations.

Second, petitioners draw an incorrect conclusion from RICO's enacted purpose. They recognize that Congress sought to combat the practices of "organized crime" who "infiltrate and corrupt" various other organizations. 84 Stat. 922-23. But, as explained above, *see supra* pp. 30-31, that statement only confirms Congress's focus on the evil it sought to prevent: the infiltration and corruption of those organizations through patterns of racketeering activity.

Third, petitioners attempt (at 27) to divine RICO's focus from Congress's decision in Section 1962 to ground its legislative authority on "enterprises" that affect or engage in commerce rather than on racketeering activity that affects commerce. But this Court rejected just such an attempt to "deduce[] by inference from boilerplate [jurisdictional] language which can be found in any number of congressional Acts" "[t]he intent of Congress as to the extraterritorial application of [a] statute." *Aramco*, 499 U.S. at 250-51. As the Court observed, such "reliance on [a statute's] jurisdictional provisions" "finds no support in our case law." *Id.* at 251; *see also Morrison*, 561 U.S. at 262-63. Those cases rejected an inference of extraterritorial effect from a jurisdictional reference to foreign commerce, but petitioners offer no reason why jurisdictional boilerplate should be disregarded for that purpose and considered probative here.

b. Petitioners' argument based on the statute's purpose and history also misstates RICO's focus. Petitioners note (at 28) that RICO's "major purpose" was "to address the infiltration of legitimate business by organized crime." *United States v. Turkette*, 452 U.S. 576, 591 (1981); *see also Russello v. United States*, 464 U.S. 16, 28 (1983) (RICO targeted "organized crime['s]" "corrupting influence"). And petitioners rely (at 28-29) on RICO's legislative history for the claim that the statute's purpose was "the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S. Rep. No. 91-617, at 76 (1969); *see* H.R. Rep. No. 91-1549, at 57 (1970); *see also* Pet. Br. 29 (citing an article explaining that RICO's "'emphasis on infiltration of legitimate organizations remained as [it] made its way through the legislative process'") (quoting Gerard E. Lynch, *RICO: The Crime of Being a Criminal*, 87 COLUM. L. REV. 661, 678 (1987)) (alteration in original). Those authorities, however, demonstrate that Congress was concerned with the *infiltration and control* of organizations using patterns of racketeering activity rather than the enterprises itself.

c. Petitioners' arguments based on RICO's structure also fail.

First, petitioners argue (at 29) that Section 1962's tripartite structure "confirms its focus on enterprise corruption" because it "tracks the various ways organized crime typically co-opts and controls" enterprises, and they hypothesize a "subordinate role of the predicate racketeering acts." This non-sequitur fails to apprehend that Section 1962 focuses on patterns of racketeering activity precisely because

they are the "various ways organized crime typically co-opts and controls" an enterprise.

Second, petitioners invoke (at 30) the irrelevant fact that the enterprise is not the "perpetrator" of Section 1962's prohibitions. Petitioners' reasoning reduces to the idea that the focus of every criminal statute is the victim rather than the conduct the statute proscribes, a notion this Court's cases refute. *See, e.g., Pasquantino*, 544 U.S. at 371; *Aramco*, 499 U.S. at 247, 255.

Third, petitioners suggest (at 31) that, because RICO's predicate acts are independently illegal, the conduct Section 1962 makes unlawful does not "need to be" its focus. By incorporating numerous illegal acts into RICO's proscriptions when they form a "pattern," however, Congress evidently thought otherwise. RICO's text and structure clearly trump petitioners' speculation about Congress's intent.

Fourth, petitioners observe (at 31) that Section 1962(a)'s exception for small investments is "keyed to the *de minimis* nature of the investment, not to the relative seriousness of the underlying racketeering activity." They then erroneously infer (*id.*) that the exception would be "capricious" if RICO's focus were on racketeering. The exception makes sense, however, because Section 1962's focus is on criminals' use of racketeering to infiltrate and corrupt organizations. If that infiltration and corruption is minimal – like a mobster buying a few shares of a publicly traded company – then Congress could sensibly exempt such conduct as a trifling instance of the evil it sought to prevent. Nothing in that choice undermines the conclusion that Congress was

focused on the conduct, a *de minimis* subset of which it excluded from the scope of RICO's prohibition.

d. Finally, petitioners incorrectly point to two aspects of RICO's civil remedies in Section 1964 as support for their argument that the statute's focus is the enterprise.

First, petitioners note (at 33) Congress's failure to enact a specific provision authorizing "injunctions against the commission of future racketeering acts," an "omission" they deem "strange . . . if such acts were the focus of [Section] 1962." But Congress legislated against the background of a "general rule" that "the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute." *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 70-71 (1992). In light of that principle, Congress's textual choice is unremarkable.

Second, petitioners suggest (at 34) that Section 1964(c)'s limitation on RICO's private right of action to recovery for injuries to "business or property," thus excluding personal injuries, indicates an "economic focus" that "would make little sense if the focus of [Section] 1962 were on racketeering activity as such." But Congress's limitation of Section 1964(c)'s civil remedy to economic losses (as opposed to personal injuries) resulting from a defendant's use of racketeering activities to infiltrate and corrupt an organization does not support petitioners' contention that Section 1962's focus is on the organization rather than the conduct that corrupts it.

Section 1962's focus is therefore the conduct it makes unlawful: investing in, acquiring control of, or conducting the affairs of an enterprise through a

pattern of racketeering activity. Accordingly, Section 1962 applies to a defendant's conduct so long as the pattern of racketeering activity through which it infiltrates or corrupts an enterprise is within RICO's territorial scope, regardless of where the enterprise may be located.

C. Respondents' Injuries Need Not Be Domestic To State A Claim Under RICO

Petitioners further contend erroneously that Section 1964(c) does not apply to injuries suffered abroad absent an express statement in the statute that foreign injuries fall within its scope. That contention demands a dramatic departure from centuries of precedent recognizing that foreign injuries may be redressed in American courts. In accord with that longstanding principle of law, Congress modeled Section 1964(c) on Section 4 of the Clayton Act – a provision that applies to foreign injuries. This Court should recognize that Section 1964(c) applies to foreign injuries as well.

Respondents consistently have advocated that this Court respect the important limitations on the application of U.S. law outside its borders by interpreting statutes to conform to customary international law limits on the exercise of the United States' prescriptive jurisdiction abroad. The court of appeals' interpretation of RICO is consistent with those limitations. Section 1962 applies abroad only to the same extent as its underlying predicates, which are carefully calibrated to comport with the Nationality Principle and the Protective Principle under international law. *See, e.g.*, 18 U.S.C. § 1956(f) (money-laundering statute applies to conduct abroad if committed by United States citizen). The additional restriction sought

by petitioners on a foreign plaintiff from recovering for injuries caused by an American citizen's violation of RICO, however, finds no basis in law. And the Solicitor General's suggestion to restrict RICO's scope to domestic injuries does not comport with a proper application of comity principles.

1. Longstanding precedent supports foreign plaintiffs' recovery of damages sustained abroad by American defendants' conduct in violation of U.S. law

American courts have always been open to foreign plaintiffs who suffer injuries abroad caused by an American defendant's unlawful conduct. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 706-07 (2004) (recognizing "traditional rule" that "a plaintiff injured in a foreign country" could bring suit "in American courts") (collecting cases); *Rasul v. Bush*, 542 U.S. 466, 484 (2004) ("The courts of the United States have traditionally been open to nonresident aliens."). That traditional rule is particularly clear and especially important with respect to an American's unlawful conduct committed on American soil that causes injury abroad. *See, e.g.*, *Sedima*, 473 U.S. at 497; *Day & Zimmermann, Inc. v. Challoner*, 423 U.S. 3, 4 (1975) (per curiam) (action against American munitions manufacturer for wrongful death caused by explosion in Cambodia of artillery round manufactured in United States); *Armendiaz*, 54 Tex. at 628 (suit for domestic misconduct causing injury in Mexico).

Congress enacted Section 1964(c) against the backdrop of that bedrock legal principle. *See Beck v. Prupis*, 529 U.S. 494, 500 (2000) ("turn[ing] to the well-established common law" principles to interpret

Section 1964(c)). Congress well understood that, under existing principles of tort law, a cause of action for unlawful conduct in one jurisdiction would reach injuries caused by that conduct in another jurisdiction. This Court has explained that, "[i]n order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the common law." *United States v. Texas*, 507 U.S. 529, 534 (1993) (citation omitted). Petitioners would invert this principle to require instead a clear statement that Congress incorporated in Section 1964(c) the common-law rule that a cause of action may be brought for foreign injuries. There is no basis for that departure from precedent, especially because (as explained below) the international law principles of prescriptive comity on which this Court has based its extraterritoriality cases have no application to the interpretation of Section 1964(c).

The novelty of petitioners' claim that, absent an express indication to the contrary, a cause of action may recover only for domestic injuries is evident in its total absence from this Court's prior extraterritoriality jurisprudence. Not a single case even hinted that the fact that the injury occurred abroad was dispositive notwithstanding the statute's silence about foreign injuries. *See, e.g.*, *Kiobel*, 133 S. Ct. at 1666; *Morrison*, 561 U.S. at 262; *Aramco*, 499 U.S. at 255; *Foley*, 336 U.S. at 285-86. In all those cases, the injury was suffered abroad. If petitioners' newly discovered domesticity requirement were controlling, then those cases should have been resolved on that ground alone.

2. Congress intended RICO to reach foreign injuries

Section 1964(c) adopted the precise wording Congress had used previously in Section 4 of the Clayton Act. *Compare* 18 U.S.C. § 1964(c) *with* 15 U.S.C. § 15(a) ("any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor"). This Court has "repeatedly observed that Congress modeled § 1964(c) on the civil-action provision of the federal antitrust laws, § 4 of the Clayton Act." *Holmes v. Securities Investor Prot. Corp.*, 503 U.S. 258, 267 (1992) (citations omitted); *see also Rotella*, 528 U.S. at 557 ("there is a clear legislative record of congressional reliance on the Clayton Act when RICO was under consideration") (citing *Sedima*, 473 U.S. at 489).

This Court also has made clear that Section 4 of the Clayton Act encompasses injuries abroad. *See Pfizer, Inc. v. Government of India*, 434 U.S. 308, 313-14 (1978) ("Clearly, therefore, Congress did not intend to make the treble-damages remedy available only to consumers in our own country."). That understanding was firmly in place in 1970 when Congress enacted RICO. *See, e.g., Carnation Co. v. Pacific Westbound Conference*, 383 U.S. 213, 215 (1966) (suit under Clayton Act § 4 against shipping companies for collusive pricing of rates for shipping condensed milk to Philippines); *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 707-08 (1962) (suit under Clayton Act § 4 could recover for injuries in Canada). This Court "may fairly credit the 91st Congress, which enacted RICO, with knowing the interpretation federal courts had given the words earlier Congresses had used . . . in the Clayton

Act's § 4." *Holmes*, 503 U.S. at 268. Because "[i]t used the same words, . . . [Congress] intended them to have the same meaning that courts had already given them." *Id.* Accordingly, when Congress enacted Section 1964(c) using Section 4 of the Clayton Act as its model, it did so intending Section 1964(c) to apply to foreign injuries.[10]

Contrary to petitioners' contention (at 51 n.6), this Court clearly recognized in *Pfizer* that Section 4 extends to foreign injuries. The Court reasoned that "an exclusion of all foreign plaintiffs would lessen the deterrent effect of treble damages." 434 U.S. at 315. The danger, the Court explained, was this: "[i]f foreign plaintiffs were not permitted to seek a remedy for their antitrust injuries, persons doing business both in this country and abroad might be tempted to enter into anticompetitive conspiracies affecting American consumers in the expectation that the illegal profits they could safely extort abroad would offset any liability to plaintiffs at home." *Id.* The risk posed by "extort[ing]" "illegal profits" "abroad" is addressed only by interpreting Section 4 to force "potential antitrust violators to take into account the full costs of their conduct," including harm caused in

---

[10] Congress confirmed its intention that Section 1964(c) applies to injuries abroad when it amended RICO in 2001 as part of the Patriot Act. Senator Kerry made clear that Congress's action "confirm[ed] that our money laundering statutes prohibit anyone from using the United States as a platform to commit money laundering offenses against foreign jurisdictions in whatever form that they occur." 147 Cong. Rec. 20,669, 20,710 (2001). And he emphasized that Congress would "continue to give [its] full cooperation to our allies in their efforts to combat smuggling and money laundering, *including access to our courts and the unimpeded use of our criminal and civil laws.*" *Id.* (emphasis added).

foreign countries. *Id.* The Court accordingly held the Government of India could recover under Section 4 for injuries indisputably suffered in India.[11]

This Court thus applied Section 1964(c) in a case involving purely foreign injuries. In *Sedima, S.P.R.L. v. Imrex Co.*, a Belgian plaintiff sued American defendants under Section 1964(c) of RICO for injuries they suffered *in Belgium* by reason of a pattern of racketeering activity carried out in the United States. The Court rejected the defendants' proposal to limit Section 1964(c) to recovery of special "racketeering injury." 473 U.S. at 495. In so holding, the Court explained that, "[i]f the defendant engages in a pattern of racketeering activity in a manner forbidden by these provisions, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under [Section] 1964(c)." *Id.* The fact that the racketeering activities injured the plaintiff exclusively in Belgium did not prevent the Court from holding that Section 1964(c) reached that injury. The Court in *Sedima* thus applied Section

---

[11] In contrast to its current position, the Solicitor General in *Pfizer* endorsed Section 4's application to foreign injuries, explaining that, "[i]f the [sovereign plaintiff's] allegations had been made by a foreign businessman or foreign corporation, the plaintiff's capacity to sue would be undisputable." Memorandum for the United States as Amicus Curiae at 2-3, *Pfizer, Inc. v. Government of India*, *supra* (No. 76-749), 1977 WL 189361. The Government also has recognized that Congress modeled Section 1964(c) on Section 4 of the Clayton Act. *See, e.g.*, Brief for the United States as Amicus Curiae Supporting Respondents at 12, *Bank of China, New York Branch v. NBM LLC*, 546 U.S. 1026 (2005) (No. 03-1559), 2005 WL 2875061 ("Section 1964(c) was modeled on the federal antitrust laws"). The Solicitor General does not even cite *Pfizer*, much less attempt to reconcile the Government's inconsistent positions.

1964(c) to foreign injuries, and it should do the same here.

Moreover, as the Second Circuit explained, *Sedima*'s analysis of Section 1964(c)'s "injury requirement," which "focuses on RICO's predicates," "dovetails with the extraterritoriality analysis" with respect to Section 1962. App. 57a. The court explained that, "[i]f an injury abroad was proximately caused by the violation of a statute which Congress intended should apply to injurious conduct performed abroad," there is "no reason to import a domestic injury requirement" into Section 1964(c). App. 57a-58a. The court thus sensibly held that Congress, by incorporating extraterritorial predicates into RICO's substantive prohibitions, intended that plaintiffs could recover for injuries proximately caused by conduct that violates those predicates abroad as well.

3. The Solicitor General's argument to limit Section 1964(c) to domestic injuries is unfounded

The sole basis of the Government's argument that this Court should interpret Section 1964(c) to include a domestic-injury requirement is to "avoid[] 'unintended clashes between our laws and those of other nations which could result in international discord.'" U.S. Br. 31 (quoting *Kiobel*, 133 S. Ct. at 1664). The Solicitor General claims the Executive Branch can exercise prosecutorial discretion to account for sensitive foreign-policy considerations but private parties have no incentive to exercise caution when bringing claims. This Court's cases preclude that argument.

a. The Solicitor General's proposed limitation would intrude on Congress's primacy in determining

the scope of statutory causes of action. This Court predicated its decision in *Kiobel* on the fact that *Congress* had not spoken on the scope of the private cause of action in the Alien Tort Statute ("ATS"), which by its terms is "strictly jurisdictional" and thus relies on judicial lawmaking to shape the contours of its cause of action. 133 S. Ct. at 1664; *see also Sosa*, 542 U.S. at 727 ("the potential implications for the foreign relations of the United States of recognizing [ATS] causes should make courts particularly wary of impinging on the discretion of the *Legislative and Executive Branches* in managing foreign affairs") (emphasis added). By contrast, the "danger of unwarranted judicial interference in the conduct of foreign policy [that was] magnified in the context of the ATS, because the question [was] not what Congress has done but instead what courts may do," is not implicated here because Congress *has* spoken. *Kiobel*, 133 S. Ct. at 1664.

The deference to Congress in matters of foreign affairs recognized in *Kiobel* thus counsels in favor of recognizing Section 1964(c)'s application to injuries abroad in accord with Congress's intent. Congress modeled Section 1964(c) on Section 4 of the Clayton Act, a preexisting statute that Congress understood applies to foreign injuries. It thus settled the question whether Section 1964(c) applies to such injuries as well. The Solicitor General asks this Court to override Congress's decision regarding the territorial scope of the cause of action due to the Executive Branch's policy preferences. That request raises serious separation-of-powers concerns and lacks any basis in this Court's cases. *See, e.g., Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 147

(1957) ("Congress . . . alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain."). This Court should therefore reject that attempt.

In any event, the canon of construction on which the Solicitor General relies (at 32) – that the Court "construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations," *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004) – has no application to whether a cause of action applies to *injuries* abroad. Every case applying that canon did so when interpreting statutes that were ambiguous with respect to the geographic scope of their regulation of *conduct*. *See, e.g.*, *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 455 (2007) (Court "assume[s] that legislators take account of the legitimate sovereign interests of other nations when they write American laws" because "[f]oreign conduct is generally the domain of foreign law") (internal quotations and alteration omitted); *Empagran*, 542 U.S. at 169 (invoking "prescriptive comity" to interpret ambiguous statute not to apply to certain "foreign conduct"); *Lauritzen v. Larsen*, 345 U.S. 571, 578 (1953) (same). By contrast, as the Solicitor General agrees, Congress has expressly and unambiguously extended RICO's substantive prohibitions abroad. No case has applied the interpretive rule the Solicitor General invokes in the unorthodox manner he suggests: to limit a private cause of action to domestic injuries when the conduct that caused the injury is unambiguously unlawful and within the territorial scope of the statute's substantive prohibition.

For example, in *Empagran*, this Court relied on that canon to interpret the geographic scope of the Sherman Act's prohibition on anticompetitive conduct. 542 U.S. at 164. As respondents argued as *amici* in that case, the extension of the Sherman Act's substantive prohibition to anticompetitive conduct committed by foreign defendants in foreign countries against foreign victims was inconsistent with customary international law because it was not "reasonable." *Id.* at 164-66 (relying on "reasonableness" requirement in Section 403 of Restatement (Third) of Foreign Relations Law of the United States (1986) ("Restatement Third")). Those international law considerations are not relevant to the interpretation of Section 1964(c), which simply provides a civil cause of action for injuries resulting from conduct Congress already made unlawful in Section 1962. And, in contrast with the situation this Court confronted in *Empagran*, Section 1962's application here to predominantly domestic conduct committed by American defendants is plainly reasonable and therefore consistent with customary international law.

This Court's consistent application of the interpretive rule to determine the geographic scope *only* of a statute's substantive regulation of conduct is grounded in the principles of prescriptive comity on which it is based. The rule derives from international law limitations on the exercise of prescriptive jurisdiction abroad, which restricts only a sovereign's authority to proscribe conduct. *See Empagran*, 542 U.S. at 164 (relying on "principles of customary international law" to hold statute does not apply to certain "foreign conduct"); Restatement (Third) §§ 402, 403 (detailing circumstances in which "a state has jurisdiction

to prescribe law" outside its territory); *id.* § 401(a) (defining "jurisdiction to prescribe" as sovereign's authority "to make its laws applicable to the activities, relations, or status of persons"); *see also Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 815 (1993) (Scalia, J., dissenting in part) (the "canon ... is relevant to determining the substantive reach of a statute because 'the law of nations,' or customary international law, includes limitations on a nation's exercise of its jurisdiction to prescribe") (citing Restatement (Third) §§ 401-416); *id.* at 817-18 ("Considering comity in this way is just part of determining whether the [statute] prohibits the conduct at issue.").

There is no comparable international law norm regarding the location of *injuries*. No recognized principle of international law limits a plaintiff from seeking a civil remedy for violations of laws that indisputably fall within a nation's prescriptive jurisdiction merely because the injuries occurred in a different jurisdiction. *See* Restatement (Third) § 421 (stating requirements for a court's "jurisdiction to adjudicate" civil cases). The Solicitor General thus asks this Court to invent a new principle of statutory interpretation grounded neither in precedent nor in the international law on which that precedent rests.

That new presumption would represent a stark departure from this Court's cases, which uniformly ground its consideration of "prescriptive comity" in international law. *See, e.g., Empagran*, 542 U.S. at 164 (grounding "rule of construction" in "principles of customary international law" that Court "assume[s] Congress ordinarily seeks to follow") (citing *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64,

118 (1804)); *Lauritzen*, 345 U.S. at 577 ("By usage as old as the Nation, such statutes have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law."). The Solicitor General offers no persuasive reason for that radical departure from precedent.

The novelty – and danger – of the Solicitor General's position is exemplified by the fact that he purports to rely on comity to bar foreign plaintiffs from recovering for injuries suffered abroad by reason of an *American* defendant's unlawful *domestic* conduct. As Congress recognized in the antitrust context, "to deny [foreigners] this protection could violate the Friendship, Commerce and Navigation treaties this country has entered into with a number of foreign nations." H.R. Rep. No. 97-686, at 10 (1982). Those comity considerations apply with particular force with respect to RICO, on which the United States expressly relies for satisfying its international legal obligations to criminalize transnational organized crime.[12] By modeling Section 1964(c) on a provision it knew applied to foreign injuries, Congress took account of these comity considerations. The Solicitor General's view thus risks creating a

---

[12] *See* United Nations Convention against Transnational Organized Crime (Palermo Convention), Nov. 15, 2000, 2225 U.N.T.S. 209; *Law Enforcement Treaties: Hearing Before the S. Comm. on Foreign Relations*, 108th Cong. 60 (2004) (responses of Samuel M. Witten, Deputy Legal Adviser, U.S. Department of State, and Bruce Swartz, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, to additional questions) (explaining that RICO implements the obligations of Articles 5, 6, and 8 of the Palermo Convention).

conflict with Congress by undermining the very comity interests he purports to protect.

In sum, Congress determined that RICO's substantive provisions should apply both to domestic conduct and to certain conduct abroad. The Solicitor General does not dispute that Congress's decision to apply Section 1962 abroad is consistent with the requirements of prescriptive comity under international law. Because Congress enacted a substantive prohibition in Section 1962 that is consistent with the limitations on its prescriptive jurisdiction, neither international law nor this Court's interpretive canons require limiting RICO's private remedy in Section 1964(c) to domestic injuries caused by that unlawful conduct.

b. The Solicitor General's comity concerns in any event lack a factual basis, especially in this case. Respondents are 26 foreign sovereigns and the European Community that have filed *amicus* briefs in this Court in prior cases emphasizing the important limits on the extraterritorial reach of American statutes. *See, e.g.*, Brief of the European Commission on Behalf of the European Union as *Amicus Curiae* in Support of Neither Party, *Kiobel v. Royal Dutch Petroleum Co.*, *supra* (No. 10-1491), 2012 WL 2165345; Brief of *Amicus Curiae* the European Commission in Support of Neither Party, *Sosa v. Alvarez-Machain*, *supra* (Nos. 03-339 & 03-485), 2004 WL 177036. Respondents are satisfied that the complaint in this case, which alleges that American corporations engaged in a pattern of predominantly domestic racketeering activity that caused injury to respondents' businesses and property, comports with limitations on prescriptive jurisdiction under international

law and respects the dignity of foreign sovereigns. By contrast, forcing American corporations to appear in European courts applying European law to those defendants' misconduct on American soil "could have serious ramifications for foreign relations." U.S. Br. 30. In respondents' view, the foreign-policy implications of bringing this suit against a U.S. corporation in a U.S. court under U.S. law are far less serious than they might be were 26 European Member States to bring multiple suits against the same U.S. corporation under different European laws.

To the extent the extraterritorial application of RICO in other contexts could give rise to comity concerns not present in this case, those concerns are adequately addressed through other legal doctrines (inapplicable here) that would limit the litigation in American courts of cases that should properly be brought elsewhere.

First, the doctrine of *forum non conveniens* operates to ensure that cases are litigated in the most practically convenient forum. When an alternative forum is available, courts weigh private and public factors including the home of the parties, the ease of access to proof, the "'local interest in having localized controversies decided at home,'" and the avoidance of difficult applications of foreign law to determine whether litigation in American courts is proper. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 & n.6 (1981) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947)). That practical inquiry may preclude the litigation in American courts of claims, unlike those in this case, brought by foreign plaintiffs against foreign defendants for conduct abroad.

Second, this Court recently re-emphasized that due process restricts the exercise of general personal jurisdiction over foreign defendants and thereby protects them from suit based on conduct abroad in many cases. *See Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). The Court explained that those restrictions play an important role in minimizing "risks to international comity" where "[c]onsiderations of international rapport . . . reinforce [the] determination that subjecting [a foreign defendant] to the general jurisdiction of [American courts] would not accord with the 'fair play and substantial justice' due process demands." *Id.* at 763 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2850-51 (2011). Because petitioners are all American corporations accused of misconduct in the United States, none of the comity considerations applicable in *Daimler* is implicated here.

Third, international law imposes limits on the extraterritorial exercise of prescriptive jurisdiction in circumstances not present here. Insofar as the claims against petitioners are partly based on extraterritorial conduct, those claims comport both with the Nationality Principle, which authorizes a sovereign to regulate the conduct of its own nationals abroad, and with the Protective Principle, which authorizes a sovereign to regulate conduct abroad that threatens its security. *See* Restatement (Third) § 402. Under *Charming Betsy*, a court should interpret RICO to apply in a manner that is consistent with international law. *See* 6 U.S. (2 Cranch) at 118 ("an act of Congress ought never to be construed

to violate the law of nations if any other possible construction remains"). Should either the Government or a private plaintiff seek to apply RICO in a manner that is inconsistent with international law limitations on prescriptive jurisdiction, courts in the United States are required to interpret the extraterritorial reach of RICO consistent with *Charming Betsy*.

These legal doctrines independently bar suits that might implicate the comity considerations raised by the Solicitor General. The Solicitor General instead invokes those foreign-relations considerations to exclude *all* suits to redress foreign injury caused by domestic conduct of American defendants, which is hardly solicitous of international comity or respectful of foreign interests.[13] Denying foreign citizens the ability to obtain relief in American courts for the foreign consequences of the domestic misconduct of American defendants may leave them without any remedy. Indeed, that policy would effectively immunize American companies for the injuries they cause abroad. As Congress has recognized, that outcome would be more destructive to international comity

---

[13] Opposing legislation that would have overturned the result in *Pfizer*, the then-Deputy Legal Adviser testified that "the foreign policy interests of this Government are best served by continuing as we have for so many years to permit foreign sovereigns unimpeded access to our courts, just as we expect to have unimpeded access to theirs." *Clayton Act Amendments of 1978: Hearing and Markup Before the Subcomm. on International Economic Policy and Trade of the H. Comm. on International Relations*, 95th Cong. 7 (1978) (testimony of Lee R. Marks). In that testimony, Mr. Marks noted that the United States has brought suit in more than 50 jurisdictions (*id.* at 11), including a successful antitrust suit against a German utility under German law in Germany (*id.* at 11, 22). Reciprocal comity should therefore be extended to foreign states under U.S. law.

than the traditional principle that foreign injuries may be redressed in American courts. *See* H.R. Rep. No. 97-686, at 10. Accordingly, the Court should reject the Solicitor General's invitation to overturn Congress's considered judgment in enacting Section 1964(c) to encompass foreign injuries.

4. Petitioners' attempt to divine a limitation to domestic injuries lacks merit

Petitioners unpersuasively attempt to read (at 48) Section 1964(c) "as limited to domestic injuries."

First, petitioners err in asserting (at 48) that "choice-of-law principles strongly support a domestic-injury limitation to civil RICO." They misread *Sosa v. Alvarez-Machain*, which interpreted the express exception of the Federal Tort Claims Act ("FTCA") to the waiver of sovereign immunity for claims "arising in a foreign country." 28 U.S.C. § 2680(k). This Court, applying background choice-of-law principles, held that a claim "arises" where the injury was suffered, and so the exception bars claims under the FTCA where the injury is suffered abroad. 542 U.S. at 705.

If petitioners were correct that civil causes of action never apply to foreign injuries absent an express statement, however, then the FTCA's foreign-country exception would have been unnecessary because the FTCA already would have been inapplicable to foreign injuries. Moreover, the relevant choice-of-law principle when the FTCA was enacted in 1946 was *lex loci delicti*: "courts generally applied the law of the place where the injury occurred." *Id.* (citing Restatement (First) of Conflicts of Laws § 379 (1934), which determined defendant's liability based on "the law of the place of wrong"). The Court

explained that "[t]he application of foreign substantive law . . . was . . . what Congress intended to avoid by the foreign country exception" for the simple reason that it did not want to subject the United States *as defendant* to foreign law. *Id.* at 707. *Sosa* thus had nothing to do with foreign injuries as a general matter; it concerned only the scope of the express limitation on the FTCA's cause of action for common-law tort claims applying foreign law *against the Government* for foreign injuries. Accordingly, the choice-of-law considerations present in *Sosa* are wholly absent here, where the cause of action is not a common-law tort, the defendant is not the United States, and Section 1964(c) contains no analogue to the foreign-country exception.

Petitioners' reliance (at 49) on *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390 (2015), is similarly misplaced. The Court there held that, because the plaintiff's claims arose out of an "episode in Austria, allegedly caused by wrongful conduct and dangerous conditions in Austria, which led to injuries suffered in Austria," *id.* at 396, they did not fall under the exception to the Foreign Sovereign Immunities Act of 1976 ("FSIA") for actions "'based upon a commercial activity carried on in the United States,'" *id.* at 394 (quoting 28 U.S.C. § 1605(a)(2)). That holding is irrelevant here because Section 1964(c) contains no analogous limitation.

Petitioners thus err in suggesting (at 50) that "RICO should be construed to preserve" the place-of-injury rule for "tort or tort-like claims," which they apparently think requires imposing a domestic-injury requirement on Section 1964(c). Both cases petitioners cite to support that theory involve statutes –

the FTCA and the FSIA – that do not provide any substantive rule of decision and instead rely on the substantive law identified by choice-of-law principles. Those statutes further expressly limit the cause of action based on either where the suit "arises" or where the conduct the suit is "based upon" took place. Petitioners nowhere explain how choice-of-law principles are relevant with respect to RICO, which indisputably provides the substantive law in this case and contains no such limiting provision.

Second, petitioners mischaracterize (at 50) this Court's cases by claiming that it "has limited the applicability of antitrust law to foreign injuries." In *Empagran*, this Court considered the scope of the Foreign Trade Antitrust Improvements Act of 1982 ("FTAIA"), which expressly excluded from the Sherman Act's prohibition "'conduct involving trade or commerce . . . with foreign nations unless . . . such conduct has a direct, substantial, and reasonably foreseeable effect'" on "domestic trade or commerce." 542 U.S. at 161 (quoting 15 U.S.C. § 6a). The Court held that the FTAIA's exclusion applies to foreign anticompetitive conduct insofar as it causes independent foreign harm. *Id.* at 159. But the Court said nothing about the application of Section 4 of the Clayton Act to foreign injuries caused by conduct that *does* fall within the Sherman Act's prohibition. Indeed, in enacting the FTAIA, Congress did "not exclude all persons injured abroad from recovering under the antitrust laws of the United States." H.R. Rep. No. 97-686, at 10. As the House report explained, when the Sherman Act's prohibition reaches certain anticompetitive conduct, "[f]oreign purchasers should enjoy the protection of our anti-

trust laws" "even if [they] . . . suffer economic injury abroad." *Id.* (citing *Pfizer*). Just as Section 4 of the Clayton Act provides a private cause of action to recover for foreign injuries caused by conduct reached and prohibited by the Sherman Act, Section 1964(c) creates a private cause of action to remedy foreign injuries caused by conduct that is unlawful under Section 1962.

Third, petitioners incorrectly claim (at 53) that "[a]bundant precedent rebuts" the court of appeals' conclusion that "the presumption against extraterritoriality cannot apply to questions of injury as opposed to conduct." Their analysis of that precedent is flawed. The Court's decision in *New York Central Railroad Co. v. Chisholm*, 268 U.S. 29 (1925), was based on limiting the scope of the substantive regulation of conduct rather than on the location of the injury. *See id.* at 32 ("[t]he carrier was subject only to such obligations as were imposed by the laws and statutes of the country where the alleged act of negligence occurred"). So, too, in *Lauritzen v. Larsen*, in which the Court explained it "c[ould] find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not in our waters" in "determining the law applicable to a claim of actionable wrong." 345 U.S. at 592-93. Both cases, therefore, involved an application of the presumption with respect to the location of the conduct that caused the injury, not on the location of the injury itself.

Congress therefore spoke clearly that it intended Section 1964(c) to allow the victims of RICO violations to recover for the injuries they suffer by reason of that unlawful conduct, wherever the

victims' injuries occur. Neither the Solicitor General's policy concerns nor petitioners' arguments refute Congress's clear intent. The Court should affirm the judgment below that Section 1964(c) allows redress for harms suffered abroad.

CONCLUSION

The court of appeals' judgment should be affirmed.

Respectfully submitted,

JOHN J. HALLORAN, JR.
JOHN J. HALLORAN, JR., P.C.
Westchester Financial Center
50 Main Street, Suite 1000
White Plains, NY 10606
(914) 682-2077

KEVIN A. MALONE
CARLOS A. ACEVEDO
KRUPNICK CAMPBELL MALONE
BUSER SLAMA HANCOCK
LIBERMAN P.A.
12 Southeast Seventh Street
Suite 801
Fort Lauderdale, FL 33301
(954) 763-8181

JOHN K. WESTON
SACKS WESTON DIAMOND
1845 Walnut Street
Suite 1600
Philadelphia, PA 19103
(215) 925-8200

DAVID C. FREDERICK
Counsel of Record
GEOFFREY M. KLINEBERG
MATTHEW A. SELIGMAN
KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@khhte.com)

February 4, 2016